

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1493

Substance Abuse Services

**SPONSOR(S):** Rogers

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2612

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee			
3)	Health & Family Services Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

**SUMMARY ANALYSIS**

This bill makes substantive changes to Chapter 394, Florida Statutes relating to Mental Health, Chapter 397, Florida Statutes relating to Substance Abuse, and Section 766.101, Florida Statutes relating to Medical Review Committees. In addition, several other sections of statute are amended to make conforming changes.

The bill makes the following changes:

- The bill deletes a requirement for a contract between the Department of Children and Families (DCF) and residential treatment facilities. These facilities were previously licensed and paid through DCF but this function has since been shifted to the Agency for Health Care Administration.
- The bill sets client eligibility for substance abuse and mental health services by establishing priority populations to receive these services. The population groups include adults and children who receive substance abuse or mental health services.
- The bill rewrites legislative intent for the substance abuse services program.
- The bill makes substantial changes to the definitions in Chapter 397, Substance Abuse Services.
- The bill makes substantial changes to the licensure process for substance abuse programs and would require licenses to be issued by service component, rather than the current process of issuing a license by facility (physical location). (The service components are listed in the bill on lines 542 through 576.) The change to service component licensure will reduce the number of licenses issued by the program by an estimated 40 percent. Fee collections for licenses issued will also be reduced an estimated 40 percent and service providers will pay less for licensure.
- The bill deletes a requirement that 50 percent of the cost to DCF of regulating (including licensing) facilities must come from licensure fee collections.
- The bill requires DCF to coordinate licensure inspections with other state agencies.
- The bill changes current law to allow probationary and interim licenses to be issued when an owner, director, or chief financial officer of an applicant facility has not received a clear background screening.
- The bill provides a process for medication assisted treatment services. This replaces the previous process relating to medication and methadone maintenance treatment.
- The bill updates language in chapter 397 to replace “client” with “individual” and “service district” with “sub-state entity.” DCF is no longer using the service district terminology and has reorganized into circuits (judicial) and zones.
- The bill authorizes DCF to establish a medical review committee for quality assurance of substance abuse, mental health and forensic programs.

The bill is anticipated to have a fiscal impact though a reduction of licensure fee collections of approximately \$233,297.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The publicly funded substance abuse and mental health services in Florida are primarily provided through the Department of Children and Families (DCF). The 2003 Legislature established separate substance abuse and mental health program offices within DCF under the Assistant Secretary for Substance Abuse and Mental Health. The services from these programs are provided statewide through a district structure.<sup>1</sup> The Mental Health Treatment Facilities (institutions) report to the Assistant Secretary for Substance Abuse and Mental Health at headquarters.

The Substance Abuse and Mental Health Program Offices are responsible for the planning and administration of publicly funded mental health and substance abuse services. These programs also serve as the primary contact to the federal Department of Health and Human Services for all issues pertaining to substance abuse and mental health. Most of the services for these programs are provided through contracts implemented at the circuit level with community substance abuse and mental provider organizations and professionals. In addition, the state mental health treatment facilities provide mental health and some substance abuse services directly to clients.

##### *Substance Abuse Program*

Chapters 394 and 397 of the Florida Statutes provide authority for the provision of substance abuse services to children and adults. Alcohol addiction (34%) accounts for the highest percent of treatment admissions for adults to the substance abuse program followed by cocaine/crack (27%) and marijuana (21%). Marijuana accounts for the highest percentage of adolescent admissions (76%) followed by alcohol (16%). In recent years there has been an upsurge in prescription drug misuse and abuse and the use of methamphetamines.<sup>2</sup>

Substance abuse services fall in three categories including prevention, treatment and detoxification services. Prevention services are designed to address risk factors which are known to contribute to substance abuse. Services to children may be provided in schools and include parents. The services to adults are targeted to the workplace, parents, pregnant women and other high risk groups. Treatment services include residential programs, outpatient treatment and recovery support services. Detoxification services are designed to eliminate substance use. These services use medical and

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<sup>1</sup> Recently aligned as 6 Regions and 20 judicial circuits

<sup>2</sup> Substance Abuse and Mental Health Services Plan: 2007-2010, January 2007.

clinical procedures to assist children and adults to withdraw from the physical and psychological affects of substance abuse. In addition, the program is responsible for licensure and regulation of the substance abuse provider system. The licensure process which includes setting standards is delineated in chapter 397, F.S., and Chapter 65D-30, Florida Administrative Code. A range of programs and facilities are licensed including but not limited to; addiction receiving facilities, detoxification, intensive inpatient treatment, residential treatment, day or night treatment, outpatient treatment, medication and methadone treatment programs. The program issues an average of 1,650 licenses per year.<sup>3</sup>

### *Mental Health Program*

The mental health program is comprised of a system of care for persons with mental illnesses in accordance with Chapters 394 and 916, Florida Statutes. The program includes mental health services to adults and children as well as oversight of the state mental health treatment facilities and the sexually violent predator program. The system of care for individuals with mental illness or co-occurring substance abuse and mental illnesses is organized as follows:

**Adult Community Mental Health:** includes outpatient care (typically at community mental health centers) and residential care such as crisis stabilization units, limited license alternative treatment facilities and short term residential treatment units.

**Children's Community Mental Health:** includes outpatient care and residential care, such as in therapeutic group homes and the inpatient psychiatric programs. The children's mental health program also manages and coordinates contracts for the Juveniles Incompetent to Proceed Program for children who have been committed by the courts to the department for competency restoration services.

**Civil and Forensic State Mental Health Treatment Facilities:** The mental health program operates or oversees services provided through 7 large Mental Health Facilities for adults who have been committed to the department by the courts. Three of the seven facilities are managed by the mental health program while the other 4 facilities operate under department contracts with private companies. The facilities provide treatment and services to three distinct populations.

- The civil population receives services at a level of care which is not available in the community.
- The forensic services population includes individuals who are not guilty by reason of insanity or incompetent to proceed.
- The sexually violent predator population program serves people who are committed under the Jimmy Ryce Act as sexually violent predators.

### Effects of the Bill

The bill makes substantive changes to Chapter 394, Mental Health, Chapter 397, Substance Abuse, and Section 766.101 Medical Review Committees in Florida Statutes. The bill makes changes as follows:

#### Section 1

Makes conforming changes to match changes in the bill

#### Section 2 (Contract Requirement for Residential Treatment Centers)

The current statutory definition of "residential treatment center for children and adolescents" in s. 394.67, F.S., includes a requirement that the provider must be under contract to DCF. Residential treatment facilities are funded and licensed by the Agency for Health Care Administration (AHCA) under the authority of s. 394.875, F.S., and further governed by 65E-9, F.A.C. Therefore, a contractual

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<sup>3</sup> Fiscal note to Bill Analysis of HB 1493 by Department of Children and Families, March 9, 2009.

requirement with DCF is no longer needed. The bill deletes the requirement for a contract with DCF from the definition and inserts the requirement to be licensed by AHCA.

### Section 3 (Mental Health and Substance Abuse Priority Populations and Enrollment requirements)

In current statute, s. 394.674(1), eligibility criteria for the substance abuse and mental health program is based on “target groups” approved by the Legislature pursuant to s. 216.0166. However, this section of Chapter 216, F.S. was repealed in 2000. The repealed statute required agencies to submit performance standards as part of the budgeting process. Within these standards, agencies were directed to identify the customers, clients, and users of each program. These performance standards were subsequently approved by the Legislature.

This bill designates the priority populations as the eligibility criteria to receive substance abuse and mental health services. The populations in the bill are substantial similar to the populations currently served. The effect of this provision will clarify and set in statute which individuals are eligible to receive services from the substance abuse and mental health programs.

Current statute gives the department rule writing authority to implement a client eligibility and fee collection process. This section of the bill provides rule authority for the department to implement client enrollment requirements. The department plans to require additional data collection from service providers as part of the client enrollment process to improve client tracking.

### Section 4 and 5

Technical and conforming changes

### Section 6 (Legislative Findings and Intent for “Marchman Act” Part I, Chapter 397, F.S.)

- This section of the bill rewords legislative intent language to update and clarify language and deletes some existing language.
- New intent language is included which states the purpose of the Legislature is to provide funds for comprehensive services, program evaluations, administrative support services, quality improvement strategies. (see comments section)
- New intent language is included regarding the establishment of co-occurring services.

### Section 7 (Definitions)

The definitions in s. 397.311, F.S., provide definitions of key terms and services used throughout chapter 397. This bill makes substantial changes and deletions to the definition section:

The bill deletes the following definitions, however, the terms are still used one or more times in Chapter 397: (see comments section)

- Addictions Receiving Facility
- Detoxification
- Intensive inpatient treatment
- Residential treatment
- Day and Night Treatment
- Outpatient treatment

The bill also:

- Deletes the definition of Assessment and adds a definition of Clinical Assessment
- Deletes the definition of Client and adds a definition of Individual.
- Adds definitions for quality improvement, recovery, recovery support, screening, service component, sub-state entity, system of care and treatment plan.

### Section 8 (Duties of the Department)

This section of the bill adds to the list of Departments that DCF is to develop partnerships with to increase resources and services the following: Departments of Juvenile Justice, Health, Financial Services and AHCA .

DCF currently provides federal funding to substance abuse coalitions. A coalition does not conduct substance abuse programs or services, but gathers information, convenes experts, and facilitates community action to achieve substance abuse prevention and reduction goals. The bill requires DCF to recognize a statewide certification process for substance abuse prevention coalitions. However, the bill does not describe how the process should be recognized and the outcome desired is not clear, what this process is and how it would be implemented. (see comments section)

The bill also deletes authority for a managed care pilot project in district 9, Palm Beach County s. 397.321(20), F.S. This project is not operating.

### Section 9 and 10

Technical and conforming changes

### Section 11 (Licensure Application, Background screening)

Current law <sup>4</sup> requires a clear background screening for any owner, director, or chief financial officer for any type substance abuse license to be issued. The bill changes law and specifies that only regular licenses may not be issued unless otherwise exempted. This change would make it possible for an owner, director, or chief financial officer who has not received a clear background screening to be issued an interim or probationary license. This appears to lower current standards for licensure. (see comments section)

This section also makes technical changes.

### Section 12 (Licensure exemptions)

This section adds that advanced registered nurse practitioners already licensed under Part I of Chapter 464, F.S., and crisis stabilization units licensed under s. 394.875, F.S., are exempt from substance abuse licensure. This section also provides rule authority for standards related to co-occurring disorders in crisis stabilization units.

### Section 13 (Licensure of government programs)

This section adds the Department of Juvenile Justice to the list of departments required to be licensed to operate substance abuse programs.

### Section 14 ( Licensure Process; fees)

Currently a substance abuse provider is licensed by the physical location of their service components. This bill provides for a licensure process that issues licenses by service component and not the physical location of the provider. Service components are listed on lines 542 thru 576 of the bill. This change to licensing service components is anticipated to reduce the number of licenses and applications by 40 percent.<sup>5</sup> This will also reduce the cost to service providers and the fees collected by DCF for licensure.

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<sup>4</sup> s.397.403(1)(e)2,F.S.

<sup>5</sup>Fiscal note to Bill Analysis of HB 1493 by Department of Children and Families, March 9, 2009.

This section of the bill requires the substance abuse licensure process to be established in rule and include fees and categories of licenses. The fees must reflect the complexity of programs (service components) specified in lines 542 thru 576 of the bill (s. 397.311(17)), F.S.

This section of the bill also deletes a requirement to phase in fee ranges for providers over a 5 year period and deletes a requirement that fifty percent of the cost of regulating service components (including licensure) must come from the collection of these fees. The deletion of this requirement may provide for a reduction in licensure fees and revenues to the program if this standard is not voluntarily upheld. (see comments section)

This section shifts text from current law s. 397.409, F.S., and updates the language to provide the process for issuing probationary, regular and interim licenses by service component (not physical location).

#### Section 15 (Probationary, Regular and Interim Licenses)

Repeals s.397.409, F.S. and transfers text with revisions to section 14 of the bill.

#### Section 16 (Inspection of Licensed Providers)

This section of the bill requires DCF to notify other state agencies of scheduled licensure inspections to improve coordination of licensure inspections.

#### Section 17 (Revocation of licenses)

This section provides that if a license to a service component is revoked, then, the provider may not apply to relicense that service component for one year. This waiting period is the same as current law for the licenses of a physical location.

#### Section 18

Conforming changes

#### Section 19 (Quality Improvement Programs)

The bill changes the name of quality assurance to quality improvement programs. This section also deletes the requirement to incorporate the peer review process as a model for improving performance.

#### Section 20 (Medication Assisted Treatment Services)

This section updates language and specifies that providers of medication treatment services are now providers of medication assisted treatment services for opiate addiction. This new term is not defined in the bill or otherwise in statute.

The bill also provides for the use of medication assisted treatment for other substance abuse disorders and provides rule authority and minimum requirements for administering this program including the provision of medication by nurses. (see comments section)

#### Section 21

Technical and conforming changes.

#### Section 22 (Background Checks)

This section provides an exemption to background checks for owners, officers and directors of Department of Corrections inmate substance abuse programs.

#### Section 23 thru 48

These sections contain updated wording, technical and conforming changes. Much of the wording changes are deleting *client* to add *individual* and deleting *service district* to add *sub-state* entity. DCF is no longer using the service district terminology and has reorganized into circuits (judicial) and zones.

#### Section 49 (Medical Review Committee)

Section 766.101, F.S., provides authority for the Department of Health, the Department of Corrections, and other professional groups, organizations, and medical service providers, including mental health treatment facilities, and community mental health centers, as defined in Chapter 394, F.S., to convene

a medical review committee for the purpose of continuous quality assurance. The reports of these committees are confidential and exempt from the provisions of s. 119.07(1), F.S., and the committee members are immune from liability. DCF does not have this authority at the department level under s. 766.101, F.S. The bill provides for the establishment of a medical review committee at the DCF to provide peer review, utilization review and mortality review of treatment services provided in mental health, substance abuse and forensic programs under chapters 394, 397 and 916, Florida Statutes.

Section 50 (Target Groups)

This section repeals s.394.9081, F.S., which directs DCF on setting target groups for substance abuse and mental health services. The bill sets target groups for both substance abuse and mental health in section 3.

**B. SECTION DIRECTORY:**

- Section 1 Amends s. 212.055, F.S., relating to discretionary sales surtax.
- Section 2 Amends s. 394.67, F.S., relating to a definition of residential treatment facilities.
- Section 3 Amends s. 394.674, F.S., relating to client eligibility.
- Section 4 Amends s. 394.9085, F.S., relating to behavioral provider liability.
- Section 5 Amends s. 397.301, F.S., relating to the short title.
- Section 6 Amends s. 397.305, F.S., relating to legislative finding and intent.
- Section 7 Amends s. 397.311, F.S., relating to definitions.
- Section 8 Amends s. 397.321, F.S., relating to duties of the department.
- Section 9 Amends s. 397.331, F.S., relating to definitions and intent.
- Section 10 Amends s. 397.401, F.S., relating to licensure penalties.
- Section 11 Amends s. 397.403, F.S., relating to license application.
- Section 12 Amends s. 397.405, F.S., relating to licensure exemptions.
- Section 13 Amends s. 397.406, F.S., relating to licensure of government operated programs.
- Section 14 Amends s. 397.407, F.S., relating to licensure process and fees.
- Section 15 Repeals s. 397.409, F.S., relating to licensure.
- Section 16 Amends s. 397.411, F.S., relating to inspections.
- Section 17 Amends s. 397.415, F.S., relating to denial, suspension or revocation of licenses.
- Section 18 Amends s. 397.416, F.S., relating to qualified professionals.
- Section 19 Amends s. 397.419, F.S., relating to quality assurance programs.
- Section 20 Amends s. 397.427, F.S., relating to medication treatment services.
- Section 21 Amends s. 397.431, F.S., relating to client cost
  
- Section 22 Amends s. 397.451, F.S., relating to background checks.
- Section 23 Amends s. 397.471, F.S., relating to facility standards.
- Section 24 Amends s. 397.501, F.S., relating to rights of individuals.
- Section 25 Amends s. 397.581, F.S., relating to unlawful activities relating to assessment
- Section 26 Amends s. 397.601, F.S., relating to voluntary admissions.
- Section 27 Amends s. 397.6751, F.S., relating to service provider responsibilities.
- Section 28 Amends s. 397.6752, F.S., relating to referrals of individuals.
- Section 29 Amends s. 397.6758, F.S., relating to release of client.
- Section 30 Amends s. 397.6773, F.S., relating to dispositional alternatives after protective custody.
- Section 31 Amends s. 397.6797, F.S., relating to dispositional alternatives after emergency.
- Section 32 Amends s. 397.6799, F.S., relating to disposition of minors.
- Section 33 Amends s. 397.6819, F.S., relating to involuntary assessment and stabilization.
- Section 34 Amends s. 397.6821, F.S., relating to extensions for involuntary assessment and stabilization.
  
- Section 35 Amends s. 397.6822, F.S., relating to disposition after involuntary assessment.
- Section 36 Amends s. 397.697, F.S., relating to court determinations.
- Section 37 Amends s. 397.6971, F.S., relating to early release from involuntary treatment.
- Section 38 Amends s. 397.6975, F.S., relating to extension of involuntary treatment
- Section 39 Amends s. 397.6977, F.S., relating to disposition of individuals.

- Section 40 Amends s. 397.702, F.S., relating to local ordinances for treatment.
- Section 41 Amends s. 397.706, F.S., relating to screening, assessment and disposition of juveniles.
- Section 42 Amends s. 397.801, F.S., relating to substance abuse coordination.
- Section 43 Amends s. 397.821, F.S., relating to early intervention councils for juveniles.
- Section 44 Amends s. 397.94, F.S., relating to information and referral networks.
- Section 45 Amends s. 397.95, F.S., relating to children's substance abuse services.
- Section 46 Amends s. 397.97, F.S., relating to children's substance abuse services models.
- Section 47 Amends s. 397.99, F.S., relating to prevention partnerships with schools.
- Section 48 Amends s. 440.102, F.S., relating to drug free workplace.
- Section 49 Amends s. 766.101, F.S., relating to medical review committees.
- Section 50 Repeals s. 394.9081 F.S., relating to target groups.
- Section 51. Provides for an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Yes. A reduction in the amount of \$233,297 in licensure fee revenue is anticipated. DCF reports revenue collections in FY 07-08 for licensure fees at \$583,243.<sup>6</sup> DCF estimates a 40 percent reduction in revenues and licenses as a result of this bill. DCF indicates in their fiscal analysis of HB 1493 that they plan to increase licensure fees for substance abuse providers to offset any revenue reductions. This would require rule promulgation to raise fees subsequent to the passage of the legislation. The rule promulgation process may require 4 to 6 months to complete or longer if rule challenges occur.

#### 2. Expenditures:

None anticipated

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Substance abuse service providers will pay less to become licensed under current fee schedule.

### D. FISCAL COMMENTS:

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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<sup>6</sup> Department of Children and Families, Schedule I revenues.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None

B. RULE-MAKING AUTHORITY:

Adds to DCF authority for rule making regarding client enrollment requirements under s. 394.674, F.S. Provides DCF authority for the defining of clinical treatment services under s. 397.311(17), F.S.

Provides DCF authority to establish by rule the licensure process to include fees and categories of licenses and standards and timeframes for licensure under s. 397.407, F.S.

Provides rule authority related to co-occurring disorders in crisis stabilization units under s. 397.405, F.S.

Provides DCF authority to establish by rule the Medication Assisted Treatment service under s. 397.427, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Title change may be needed: Bill title is substance abuse services, although bill has changes to mental health services and programs.

Section 6

Lines 382 thru 388 may be construed as a Legislative commitment to funding outside the appropriations process. Suggest removal of this section or add within the limits of appropriations. Line 394 states Legislative intent to establish co-occurring services. This was probably intended to say services to persons with co-occurring disorders.

Section 7

The definitions of Addictions Receiving Facility, Detoxification, Intensive Inpatient Treatment, Residential Treatment, Day and Night Treatment, and Outpatient Treatment, are deleted from statute. However, the terms are still used in chapter 397, F.S. This would eliminate definitions for key terms used in the law. In addition, these deleted terms are the titles of service components which will be the new licensure category for substance abuse facilities. DCF staff advised they plan to define these terms in rule. However, removing these definitions from statute and moving them to rule reduces Legislative control over what defines a service component for the substance abuse program.

Section 8

It is not clear what is meant by the wording "recognize a statewide certification process" If the intents is to develop a certification process, then this wording could be changed to direct DCF to "develop" a statewide certification process and add rule authority.

Section 11

The bill changes law and specifies that only a regular license may not be issued unless otherwise exempted. This change would mean that it is now possible for an owner, director, or chief financial officer who has not received a clear background screening to be issued an interim or probationary license. This appears to lower current standards for licensure.

Section 14

The change to licensing service components is anticipated to reduce fees collected for licensure by approximately 40 percent. DCF advises that they plan to increase licensure fees through rule promulgation to compensate for the loss and make the process budget neutral. However, rule

promulgation usually requires 4 to 6 months minimum to accomplish when there are no challenges. This delay could cause a reduction in revenue that is not recoverable since increased license fees would not be implemented by the bill effective date, July 1, 2009. Language could be added to the bill to direct DCF to promulgate in rule a fee schedule that is sufficient to compensate for any lost revenues by the change in licensure process. In addition the effective date of the new licensure process in the bill could be made effective only after the new fee rules are promulgated.

The bill deletes a requirement that fees from licensure must be sufficient to cover at least fifty percent of the cost of regulating service components (i.e. licensure process). This may cause a reduction in licensure fees and revenues to the program if this standard is not voluntarily upheld.

#### Section 20

Medication assisted treatment service is not defined in the bill or otherwise in statute.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**